

# **Exhibit 11**

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Mary Delany – December 9, 2016

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 3:16-cv-02477
	)	VC
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,	)	
	)	
Defendant.	)	
	)	
and Related Claims.	)	
	)	

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF MARY DELANY  
San Francisco, California  
Friday, December 9, 2016  
Volume I

REPORTED BY:  
REBECCA L. ROMANO, RPR, CSR No. 12546

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1 MARY DELANY

2 having been administered an oath, was examined and  
3 testified as follows:

4

5 EXAMINATION

6 BY MR. LIPPETZ:

7 Q. Good morning.

8 A. Good morning.

9 Q. We met briefly off the record, but could  
10 you please state your name for the record.

11 A. Yes. My name is Mary Delany.

12 Q. And who are you currently employed by?

13 A. I'm employed -- employed by the  
14 University of California, Davis.

15 Q. And what is the relationship between the  
16 University of California, Davis and the named party  
17 in this case, The Regents of the University of  
18 California?

19 A. The Regents of the University of  
20 California have authority for the University of  
21 California sister campuses, so they are the  
22 oversight, the Board of Regents.

23 Q. Okay. And -- and this is obviously not  
24 meant to trick you, although --

25 A. Yeah.

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1       you what she looked at, and the additional things  
2       she now has -- is prepared to testify about based  
3       on that additional review.

4           Q.     (By Mr. Lippetz) Dean Delany, do you  
5       have additional testimony, as the corporate  
6       representative of the Regents, regarding the  
7       questions I asked you about Exhibit 145?

8           A.     Yes. Exhibit 145 were the guidelines  
9       from the University of California, Office of the  
10      President, maybe a 15-or-so-page document. And I  
11      wasn't able to establish, without looking at the  
12      other documents I had, whether or not there were  
13      updated or further policies.

14               And so what I reviewed was guideline 10,  
15      which is an implemented policy that relates to  
16      item 10, the tangible research projects. And as I  
17      read it, it's word for word the same.

18               Then I also reviewed the Office of the  
19      President, ANR, which is -- is Agriculture Natural  
20      Resources division, which the AES and the  
21      Cooperative Extension scientists report up through,  
22      therefore, the 485 policy, which elaborates on  
23      materials that are not outlined here in 1989  
24      specifically to propagated plants.

25               So it's more specificity, which makes

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1 sense in terms of ANR policy, given that it's AES  
2 and Cooperative Extension scientists who work with  
3 plants and animals, et cetera, et cetera, which is  
4 quite a different endeavor than the typical faculty  
5 members' responsibilities.

6 So therein, then, there was the -- the  
7 policy that establishes the -- the policy for plant  
8 material and also for the reporting authority up  
9 through the dean's office and the licensing. And  
10 so that's a policy that's -- exists that we adhere  
11 to.

12 So that policy, of course, was  
13 established in -- well, this is -- supercedes  
14 another policy. This is 485. Then there was 450.  
15 We transferred to 485 as a name and, further back,  
16 policy 450. So this builds on that policy.

17 Q. In your research you did at the break,  
18 did anything cause you to believe that Exhibit 145  
19 has been -- as a -- as a complete document has been  
20 superceded or -- or canceled by the Office of the  
21 President?

22 A. This is additive --

23 Q. Okay.

24 A. -- to 145.

25 Q. So --

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1       STATE OF CALIFORNIA       ) ss:  
2       COUNTY OF CONTRA COSTA    )

3

4           I, Rebecca L. Romano, CSR. 12546, do hereby  
5       certify:

6           That the foregoing deposition testimony was  
7       taken before me at the time and place therein set  
8       forth and at which time the witness was  
9       administered the oath;

10          That the testimony of the witness and all  
11       objections made by counsel at the time of the  
12       examination were recorded stenographically by me,  
13       and were thereafter transcribed under my direction  
14       and supervision, and that the foregoing pages  
15       contain a full, true and accurate record of all  
16       proceedings and testimony to the best of my skill  
17       and ability.

18          I further certify that I am neither counsel  
19       for any party to said action, nor am I related to  
20       any party to said action, nor am I in any way  
21       interested in the outcome thereof.

22          IN WITNESS WHEREOF, I have subscribed my name  
23       this 23rd day of December, 2016.

24

25

\_\_\_\_\_  
Rebecca L. Romano, RPR,  
CSR. No 12546

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DEPOSITION ERRATA SHEET

Case Name: California Berry Cultivars, LLC v. The Regents of the University of California  
 Name of Witness: Mary Delany, Ph.D.  
 Date of Deposition: December 9, 2016  
 Job No.: 120916-RRD  
 Reason Codes: 1. To clarify the record.  
 2. To conform to the facts.  
 3. To Correct transcript errors.

Page 55 Line 5 Reason (3)  
 From SITTING to SIFTING

Page 168 Line 21 Reason (3)  
 From the VIDEOGRAPHER to the DEPONENT

Page 235 Line 7 Reason (3)  
 From THE VIDEOGRAPHER to the DEPONENT

Page 245 Line 12 Reason (3)  
 From SITTING to SIFTING

Page 322 Line 14 Reason (3)  
 From Forward to Board

Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
 From \_\_\_\_ to \_\_\_\_

Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
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 From \_\_\_\_ to \_\_\_\_

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1 DEPOSITION ERRATA SHEET

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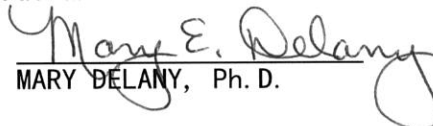
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22 ☒ Subject to the above changes, I certify that  
the transcript is true and correct

23 ☐ No changes have been made. I certify that  
the transcript is true and correct.

24   
25 MARY DELANY, Ph.D.